Supreme Court, U. S.
FILED
AUG 9 1978
MICHAEL RODAK, JR., CLERK

IN THE

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No. 78-23

DOROTHY MATTHIAS, Petitioner

vs.

FLORENCE WOOD ENDRES, Respondent

BRIEF FOR RESPONDENT IN OPPOSITION

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Phillip H. Logan
Post Office Box 2279
Sanford, FL 32771
Counsel for Petitioner

Charles E. Felix
1633 N. Dormont Lane
Orlando, FL 32804
Counsel for Respondent

Richard J. Brooks
Post Office Box 523
Altamonte Springs, FL 32701
Counsel for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No. 78-23

DOROTHY MATTHIAS, Petitioner

vs.

FLORENCE WOOD ENDRES, Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions below are adequately set forth in the Petition.

JURISDICTION

The Supreme Court lacks jurisdiction under 28 U.S.C. §1257 (3) because there has been no violation of any title, right, privilege or immunity which could be set up or claimed under the Constitution of the United States. This litigation arose in and was decided in the Florida courts on independent and adequate state grounds.

QUESTIONS PRESENTED

I. Does strict adherence to the law concerning state created property rights, illuminated by a prior interpretation of the State Constitution by the State Supreme Court which is directly controlling authority, constitute a violation of the due process or equal protection amendments to the United States Constitution?

II. Does the mere assertion of a federal constitutional question during the course of litigation require, as a matter of federal equal protection or due process, that the State Supreme Court conduct a full scale review of a case arising solely under the State Constitution or deny the validity of controlling state case law not based on Constitutional questions where the state court below unambiguously admits that its own decision is contrary to controlling state precedent which it is undeniably bound to follow?

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent constitutional provisions are adequately set forth in the Petition.

STATEMENT

Edward C. Endres died testate on March 29, 1971, survived by his widow, one adult child, and two grandchildren (children of a deceased child). Decedent died siezed of real property which qualified as "homestead property" under the laws and Constitution of

the State of Florida. His will provided that this real property was to go to his surviving spouse.

The Probate Court entered an Order determining that the real property in question was homestead property and further held that decedent could devise such homestead to his widow. This decision followed the controlling authority enunciated by the Florida Supreme Court in **In re Estate of McCartney**, 299 So. 2d 5 (Fla. 1974), a case cited by the court and squarely on point. (App. of Petition, p. la(b)).

The Fourth District Court of Appeals took issue with the interpretation accorded article X, Sec. 4(c), **Florida Constitution** (1968) by the Supreme Court in the **McCartney** case, concluding that the devise was invalid according to its own view. It reversed and remanded the cause in blatant disregard not only of the **McCartney** precedent but of **Hoffman v. Jones**, 280 So. 2d 431 (Fla. 1973), which demands that District Courts of Appeal whose opinions are in conflict with those of the State Supreme Court follow the case law set forth by the latter court. The fact that both of these decisions were controlling and that the District Court's holding was in direct conflict with them was admitted in the Court's opinion. The only authority cited in the District Court's opinion as a basis for the "vesting" theory here urged by Petitioner was a Florida statutory provision which the court deemed applicable in spite of the clear mandate of **McCartney**. No mention whatsoever was made of the implication of any due process or equal protection issues, state or federal. (See App. of Petition, p. 2a, for text).

In view of the District Court's open admission that its holding was in direct conflict with the controlling construction of article X, Sec. 4(c), the Florida Supreme Court granted certiorari and vacated the District Court's decision without oral argument. It is obvious that oral argument would have served no purpose at that stage in this case, since the error by the court below had already been conceded, in effect, in the court's own words.

ARGUMENT

I. THE DECISION BELOW WAS BASED ON INDEPENDENT AND ADEQUATE STATE GROUNDS

The only issue in the present case involves the Florida Supreme Court's interpretation of its own State Constitution, regardless of attempts by Petitioner to interject unfounded fed-

eral constitutional claims. There is, therefore, no ground whatsoever which would warrant review by this court or certiorari. The Florida courts, as well as other state courts, should be left to interpret and follow state law concerning purely state created rights without fear that every constitutional or statutory construction and procedural decision faces ultimate scrutiny by the United States Supreme Court simply because a litigant has appended federal constitutional claims to its position.

The Court's attention must at the outset, be drawn to the absence of any valid federal claim in this case which might give it jurisdiction under 28 **U.S.C.** §1257 (3). The substantive and procedural aspects of the case are governed by state, not federal, law. The controlling State Constitutional provision, concerning the disposition of state homestead property, was construed by the State Supreme Court to hold that a decedent could devise such property to a surviving spouse if there were no minor children. It was the clear judicial duty of the lower Florida courts to follow this construction of Florida law and is a matter solely within the province of the State Supreme Court to uphold in the face of flagrant defiance by the District Court of Appeals.

Petitioner, however, urges that somewhere within the straightforward setting of state law shown above there lurks a federal issue which should take the case completely out of the hands of the Florida courts and vest jurisdiction in the Supreme Court of the United States. This claim is based, however, on alleged federal constituional grounds, unsupported by any reference to authority, which rely solely on Petitioner's personal view of the Florida Constitution. A basic tenet long adhered by this Court, however, is that the Supreme Court "is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the state." **Quong Ham Wah Co. v. Industrial Commission,** 255 U.S. 445, 448 (1921). The term "state statute" above clearly encompasses state constitutional provisions. **Walker v. Sauvinet,** 92 U.S. 90 (1875).

Unfortunately, Petitioner's brief plainly misstates the construction of article X, Sec. 4 (c), by the Florida Supreme Court in the **McCartney** case, **supra**. Petitioner asserts that the **McCartney** decision did not construe or interpret article X, Sec 4 (c) and implies that the ruling was based on a prior case whose facts made it totally inappropriate for use as precedent (Petition, p. 5). This apparently is intended to leave the impression that the Florida

Supreme Court's decision in **McCartney** was so lacking in merit that the United States Supreme Court should abandon its refusal to assume jurisdiction over such purely state matters and reinterpret the State Constitution so as to give rise to Petitioner's unsupported constitutional claims, based on the vesting of the property according to such reinterpretation. The words of the **McCartney** decision, however, unmistakeably contradict Petitioner's position, as follows:

> This Court, in the **McGinty** case, **supra**, **[In re Estate of McGinty**, 258 So. 2d 450 (Fla. 1972)] specifically held that, since " [t]he class of persons designated as 'minor children' is substantially different from and inconsistent with "lineal descendants.' . . . the requirements of Article X, §4, of our present Constitution, adopted in 1968, controls and repeals the inconsistent provision of Florida Statutes, §731.05 (1)." In that case, McGinty, a widower, was survived by four adult children, and the devise of his residence to one of his daughters was held to be valid. We consider that case to be controlling in the present case. Since on the date of the order presently considered the case law established the right of a decedant to devise homestead property to an adult child or children, we hold that the obverse is true, and that, in the absence of a minor child, the decedent could devise homestead property to his surviving spouse."

299 So. 2d at 6. Obviously, the **McGinty** decision, **supra**, was based entirely on the court's interpretation of article X, Sec. 4 (c), the exact provision in question in **McCartney**. The **McCartney** court, which set out article X, Sec. 4 (c) verbatim in a footnote to add to the clarity of its decision, merely applied the **McGinty** construction to the set of facts in the later case. Nowhere is it maintained, except perhaps by Petitioner here, that a statutory or constitutional construction should be avoided simply because the scope of the construction can be amplified and extended to a case whose facts are covered but somewhat different.

The **McCartney** decision was based wholly on article X, Sec. 4 (c) and should not be disturbed by this Court. The only federal constitutional questions presented to the Supreme Court of Florida were based on divestiture of property rights which had vested solely according to Petitioner's independent interpretation of the State Constitution. This interpretation, however, was in direct conflict with a State Supreme Court construction, already placed on the provision in question, which held that the homestead property could pass by devise. Clearly, this judicial construction means that there could never have been an automatic vesting of the property in another party upon decedent's death where such property was specifically subject to devise.

This interpretation of Florida law was the exclusive domain of the Florida Supreme Court, not of Petitioners, nor of the United States Supreme Court, according to its own decisions, **supra**. When the litigation arose, the Florida courts were asked to ignore existing precedent, under the proposition that the prior construction of article X, Sec. 4 (c) by the Supreme Court was erroneous, and to adopt federal constitutional claims based **in toto** on an alternative interpretation of the State Constitution. There was no reason for the courts to reach or address constitutional issues, however, since the controlling construction of Florida law had already been conclusively rendered. This construction of the State Constitution respecting property rights to state land involved no federal rights whatsoever. The only proper course for the courts, especially the State Supreme Court, to follow was to adhere to controlling state precedent, regardless of illusory claims of federal rights based on conflicting **opinion** as to the proper constitutional construction. This Court has held that it will not review judgments of state courts that rest on adequate and independent state grounds. **Dixon v. Duffy**, 342 U.S. 33 (1951). In addition it has been stated that the Supreme Court has no jurisdiction to review a state court decision,

> unless it appears affirmatively from the record not only that a federal question was presented for discussion to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause; that the federal question was actually decided, or that judgment as rendered could not have been rendered without deciding it.

Southwestern Bell Telephone Co. v. Oklahoma, 303 U.S. 206, 212, 213 (1937). The significance of this language should be self-evident in light of the foregoing discussion.

It must be pointed out that Petitioner's vague equal protection claim, based on the Florida Supreme Court's procedural handling of this case, should in no way be treated apart from the substantive issue of state constitutional law. This Court has held that it is a familiar principle that the "independent and adequate state grounds" rule applies equally to procedural as well as substantive matters. **Henry v. Mississippi**, 379 U.S. 443 (1964), **reh. denied**, 380 U.S. 926 (1964). Petitioner in the instant case has surveyed a certain group of Florida cases presented for Writ of Certiorari to the Florida Supreme Court and concluded with an analysis which elevates any deviation by that Court from prior procedure, for whatever reason, to a federal constitutional issue. Once again, there is not a single

reference to source of authority which would propose that absolute procedural consistency by a state court in certiorari proceedings is a requirement of equal protection. Moreover, neither the affidavit relied on nor the argument in the Petition cites one Florida case among the "hundreds" (Petition, p. 7) surveyed which corresponds factually to the case at hand. The probability that this case, where the lower court's decision of record clearly admits that it is reached in defiance of controlling authority, is quite rare is conveniently ignored. Instead, Petitioner insists that the state court's discretion in dealing with such a case is to be completely abrogated by a claim that this writ of certiorari proceeding must conform precisely to that of any group of cases arbitrarily selected by Petitioners.

As with the interpretation of the State Constitution, the procedure to be followed by the Florida Supreme Court regarding matters of state law, is solely within power of that court to establish. Petitioner has failed to put forward a constitutional question relating to the Florida Court's action based either on pertinent authority or plain common sense. The court's decision was clearly based on independent and adequate state grounds according to both procedure and substance.

II. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW

Although this Court's lack of jurisdiction in this case based on any federal claim whatsoever is denied above, the narrow scope and local nature of the controversy must be brought to the Court's attention. Indeed, an examination of the Petition itself fails to disclose any claim that this case merits special attention by the nation's highest tribunal. The reason for this omission should be clear; this litigation, which is exclusively concerned with state law, had no significance whatsoever beyond Petitioner's isolated claim contesting a 1971 will. No national issues are involved. An ultimate finding in favor of Petitioner, for which it would be necessary for this Court to adopt a revolutionary stance with regard to intervention into the authority of state courts to interpret and enforce their own laws, would serve to benefit only this single plaintiff.

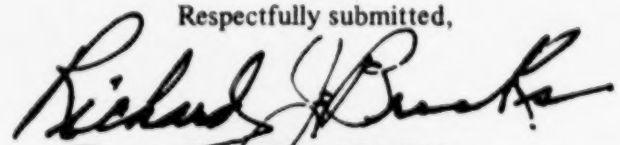
In 1972, the constitutional provision, article X, Sec. 4 (c), was further amended so that the wording would unmistakeably and unequivocally support the Florida Supreme Court's interpretation in **McCartney**. This not only lends the strongest possible credibility to the

state court's original interpretation of the provision, but also buttresses the logic of this Court's policy of leaving the construction of state law to state courts. Here, the Florida court was familiar both with precisely why article X, Sec. 4 (c) had been enacted and what state practice had been subsequent to such enactment. This knowledge became part of its construction of the provision and was vindicated immediately by the state legislature. It is inconceivable that the United States Supreme Court should deem it appropriate here to second-guess the highest court of Florida in interpreting its own law in order to validate abstract and wholly unsupported constitutional claims of this single Petitioner.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari. be denied.

Respectfully submitted,

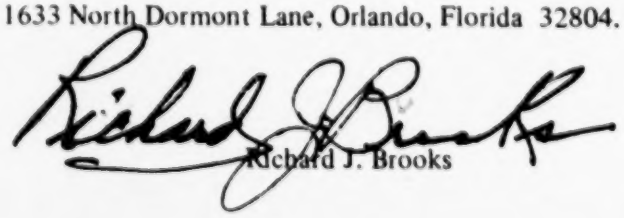


RICHARD J. BROOKS
Post Office Box 523
Altamonte Springs, FL 32701
Counsel for Respondent

Dated this 24th day of July 1978.

CERTIFICATE OF SERVICE

I hereby certify that three true copies of the foregoing have been furnished by United States Mail this 3rd day of August, 1978 to Phillip H. Logan, Attorney for Dorothy Matthias, P.O. Box 2279, Sanford, Florida 32771 and Charles E. Felix, Attorney for Florence Wood Endres, 1633 North Dormont Lane, Orlando, Florida 32804.



Richard J. Brooks